

JAN 28 1983

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

BEFORE THE ARBITRATOR

In the Matter of the Petition of

FRANKLIN PROFESSIONAL FIRE FIGHTER'S ASSOCIATION,
LOCAL 2760, I.A.F.F.

CASE XXIX
No. 29682 MIA-677
Decision No. 19694-A

For Final and Binding Arbitration Involving Fire
Fighting Personnel in the Employ of the

Stanley H. Michelstetter II
Arbitrator

CITY OF FRANKLIN (Fire Department)

Appearances:

Mr. James W. Houtler, Representative, appearing on behalf of the
Association.

Mr. David P. Moore, Representative, appearing on behalf of the
Employer.

INTEREST ARBITRATION AWARD

On July 19, 1982, the Wisconsin Employment Relations Commission appointed me as impartial arbitrator pursuant to Section 111.77 (4)(b), Wis. Stats., with respect to a dispute existing between the Franklin Professional Fire Fighter's Association, Local 2760, I.A.F.F., herein referred to as the Union, and the City of Franklin, herein referred to as the Employer. Pursuant to an agreement of the parties to permit me to attempt to mediate the dispute, I conducted a mediation session in Franklin, Wisconsin, on August 26, 1982, which proved unsuccessful. Thereafter, the parties entered formal written submissions and waived hearing in this matter. Each party submitted written arguments, the last of which was received October 22, 1982.

ISSUES

The sole issue between the parties is the wage rate for the parties' calendar 1982 collective bargaining agreement. The Union takes the position that there should be a seven (7) percent increase beginning January 1, 1982, with an additional five (5) percent increase beginning July 1, 1982. The Employer takes the position that there should be a six (6) percent across the board wage increase commencing on January 1, 1982.

POSITIONS OF THE PARTIES

The Union takes the position that although its employees work a different work schedule than the other Milwaukee area fire departments, that they put in forty-five (45) active duty hours compared with the approximate twenty (20) active duty hours of other fire departments. In addition, they take the position that they are on call for an additional three (3) hours per day, five days per week. They also argue that because all fire fighters in Franklin are qualified as motor pump operators, that wages of Franklin fire fighters should be compared to the motor pump operator rates of all other departments. They argue that the CPI-U (Milwaukee area) has increased 78.41% (1975 to 1981) and that under either party's offer, employees would not keep pace with that change in the cost of living. They further argue that in 1972 and 1973, city police and fire fighters had the same wages but that through a series of wage increases greater than those received by fire fighters, the police have tended in recent years to earn more than fire fighters. As of now, police receive \$81 per month more in base pay. It is their view that although their final offer would yield a year-end wage rate which exceeds that of the police, that fire fighter's wages would still remain very much within the customary range between the two departments. With respect to the ability of the Employer to pay, the Union argues that the operating budget for 1982 of the City of Franklin is four million dollars of which \$465,364.00 is for the operation of the fire department. It cites the existence of a contingency fund of \$55,000.00 and a fund for labor settlements of \$160,000.00 as well as a \$7,000.00 budget for the purposes of hiring a professional labor negotiator as evidence that the City has the ability to pay the wage increase requested by the Union. It also notes that the City has earned interest on the \$160,000.00 which it estimates to be \$14,400.00. It notes that in each of the past five years, the City has consistently failed to levy the full amount of taxes which it was permitted to. It also notes that the cost of providing fire protection in the City of Franklin is among the lowest of Milwaukee metropolitan suburbs having any full-time fire protection. It argues that there is slightly greater than \$5,300.00 difference between the cost of the Employer's offer and the cost of the Union's offer. It denies that layoffs would be required in order for the City to be able to pay for the Union's proposed wage increase. It argues that under Section 62.13 (5)(m)(a) it is its view that the statute requires that all volunteer fire fighters be laid off before any full-time fire fighters are laid off.

The Employer takes the position that its six (6) percent offer is greater than the 3.8% difference in the CPI-U (Milwaukee area) for the period July 1981 to July 1982. The Employer takes the position that it is going to have substantial difficulty in paying the Union's wage offer. It notes that it has already had a twenty-nine percent increase in property taxes for 1982, and it has had an alleged \$148,000 "short fall" in state-shared revenue and a \$3,000 "short fall" in federal revenue. It notes that it has taken efforts to freeze new programs and to cut back department budgets by ten (10) percent. Although it has a \$49,000 emergency fund and a \$30,000 five-year capital plan fund, these funds have been spent and/or encumbered for other vital reasons. It argues that if the Union's offer is adopted, it will have to layoff employees.

Next, it argues that private sector comparability favors the Employer's position. It denies that the Union's historical wage comparability information is accurate because figures from the Glendale fire department are omitted in some years and supporting data is missing for some of the figures. It also argues that the Arbitrator ought to consider the overtime pay and standby pay received by fire fighters in making wage comparisons. It denies that comparisons to motor pump operators in other departments are appropriate because no employee is designated to operate any particular piece of machinery in this department. It argues that if standby pay is considered, unit employees earn \$1,427.06 more per year than is listed on the Union exhibits.

DISCUSSION

Pursuant to section 111.77 (4)(b), Wis. Stats., I am required to select the final offer of one of the two parties. The standards to be applied are those provided in section 111.77 (6), Wis. Stats. These will not be restated herein for the purposes of brevity, but these are the standards that are applied.

External Comparisons

The following facts are apparently not in dispute. Almost all fire fighters in Wisconsin work an average fifty-six hour work week with twenty-four hour shifts.^{1/} About twenty hours per such week are "active" duty hours. All full-time Franklin fire fighters work a nine hour shift, Monday through Friday, forty-five hours per week. In addition, all must be on call one hour before and two hours after their shift each week day. There is no additional compensation for this work. Apparently, employees do stand-by for rescue squad work on one night a week and receive three hours pay for the stand-by period. The pay for this work resulted from a 1981 interest arbitration award.

In comparing one unit of fire fighters to another, it is best to consider total compensation of each for the same work. Additional work resulting in additional compensation, such as overtime work, ought to be ignored. Under the available evidence, the nine (9) hour day with unpaid on call appears to be the parties' own definition of full time and should be comparable to other departments. Unless there is some substantive evidence to the contrary, pay which is designated for specific additional tasks such as on call pay in this department and motor pump operator in the other departments, ought to be excluded for comparison.

The Union submitted the most comprehensive comparative data involving comparison of the wage rate for Milwaukee area fire departments with those of the Franklin fire department. Although, some supporting data was apparently accidentally eliminated, essentially all of it is backed with verified reports. I conclude the Association's data is sufficiently reliable to give an accurate picture of the historical comparison of this unit with similar Milwaukee area units.

In 1975, Franklin ranked first for fire fighter year-end wage rates among the eleven Milwaukee area units for which data was available.^{2/}

- ^{1/} There are variations in the number of days on and the number of days off among departments. Not all employees in all departments work on these shifts.
- ^{2/} The thirteen Milwaukee area units upon which I rely are: Franklin, South Milwaukee, West Allis, Greenfield, Oak Creek, Glendale, Shorewood, Whitefish Bay, Wauwatosa, Brown Deer, West Milwaukee, St. Francis, and Greendale. The Association treats Cudahy as having only motor pump operators. There is no information in the record with respect to this matter and Cudahy has, therefore, been ignored.

In 1976, it was first among the twelve of the thirteen for which data was available. By 1977, it dropped to fourth of the thirteen. In 1978, it dropped to ninth of the thirteen. In 1980 and 1981, it was eleventh out of the thirteen. If the Union's offer is accepted for 1982, it would have a year-end wage rate which holds the eleventh ranking. The Employer's offer would reduce the ranking to twelfth.

The Employer presented information as to the increases received by fire fighters in the seventeen largest municipalities in Wisconsin (1981-1982). Although the wage rates received do not bear as significant a relationship to those of Franklin fire fighters as suburban fire fighters, the rate of increase is relevant. The information provided is as follows: 3/

<u>City</u>	<u>% Increase</u>	<u>City</u>	<u>% Increase</u>
Milwaukee	12.26	Janesville	9.25
Madison	10.79	Waukesha	9.98
Green Bay	12.62	Oshkosh	11.15
Racine	7.75	LaCrosse	7.03
Kenosha	8.57	Sheboygan	10.16
West Allis	9.25	Fond du Lac	9.04
Appleton	8.47	Beloit	10.12
Eau Claire	9.22	Manitowoc	8.99
Wauwatosa	10.97		

The average increase is 9.74%; none is less than 7%. The highest is 12.62%. The Employer's offer is 3.74% less; and of the Union offer, the average increase over the year is approximately .2% less than the average, and the year-end rate is about 2.6% higher than the average rate. Based upon the comparable data, the offer of the Union is heavily more preferable.

Internal Comparisons

Comparisons to supervisory and non-represented personnel are not useful in this case. The following are the wage increase comparisons (final offers) for other-city units:

	<u>Clerical</u> ^{4/}	<u>Department of Public Works</u> ^{5/}	<u>Police</u> ^{6/}	<u>Fire</u>
Employer	6%	6%	6%	6%
Union	6%	8%	8%	7% 1/1/82 5% 7/1/82

3/ Employer exhibit 10.

4/ Settled, 2 year agreement, 1983 is 6% as well.

5/ Union offer adopted, City of Franklin (Med/ Arb - 1598), (Decision No. 19569-A), Imes, 11/82.

6/ Union offer adopted, City of Franklin (MIA - 668) Grenig 1/83, This is a two-year agreement. The 1983 increase was also 8%.

The Union ^{7/} offered a historical comparison of its pay to that of the Franklin police. In 1971, 1972, 1974, ^{8/} 1975, and 1976, the two units had roughly equal wage rates. In 1977, the police received a 1.75% of wage rate, a greater increase than the fire department, which discrepancy continued in 1978. Again in 1979, the police received a .5% of wage rate greater increase than the fire, and in 1980, the year-end wage rate of the police was increased by 2.5% of total wage rate more than the fire in that year. In 1981, both received the same percentage increase. As of 1981, the monthly salaries were: police -- \$1,766, fire -- \$1,684.22. If the Union's position is adopted, ^{9/} the fire pay will be \$1,892.28 compared to \$1,907.28 for the police.

Clearly, the Union's offer in this case results in a larger (by percentage) increase than all other units sought. However, even with the Union's larger increase, the Union's year-end wage rate will still be less than the nearest internal comparable. Adoption of the Employer's offer will leave this unit 2% worse off than all but the clerical unit. On this basis, the Employer's offer is slightly more preferable.

Cost of Living

Ordinarily, collective bargaining agreements are viewed as catch up for the previous year's inflation. The CPI-U (Milwaukee) figures for January, 1981, to January, 1982, give a percentage change of 9.4%. The Employer's offer is 6% or 3.4% less than this amount. The Union's offer is roughly 9.5% increase, with a year-end wage rate increase of almost 12.3% or .1% or 2.8% difference. On either basis, the Union's offer is preferable.

Ability to Pay

The Employer submitted the transcript of proceedings and exhibits submitted to Arbitrator Immes in City of Franklin (Med/ Arb - 1598, Decision No. 19569-A) 11/82, and to Arbitrator Grenig in City of Franklin (MIA-668) 1/83. This was its entire argument as to this matter in this case. As in the other cases, the Employer alleged that layoffs in this unit would be required if the Union's offer were to be adopted. Arbitrator Immes ably addressed this argument at pages 7 to 9 of her decision therein, and concluded that the Employer's ability to pay claim should be given no weight. I agree with her conclusions, both substantively and on the basis of the policy favoring consistency of awards under identical circumstances. One matter must be addressed separately, however. ^{10/} It is the Union's position that section 62.13 (5m)(a), Wis. Stats.

7/ Exhibit 36

8/ Year-end wage rate

9/ Stand-by pay, which is approximately \$119.00 per month per person is designated as pay for additional work. Without more evidence, this can not be used for comparison for wage rates.

10/ Section 62.13 (5m)(a) reads: "When it becomes necessary, because of need for economy, lack of work or funds, or for other just causes, to reduce the number of subordinates, the emergency, special, temporary, part-time, or provisional subordinates, if any, shall be dismissed first, and thereafter subordinates shall be dismissed in the order of the shortest length of service in the department, provided that, in cities where a record of service rating has been established prior to January 1, 1933, for the said subordinates, the emergency, special, temporary, part-time provisional subordinates, if any, shall be dismissed first, and thereafter subordinates shall be dismissed in the order of the least efficient as shown by the said service rating."

prevents the Employer from laying off any full-time employees until all volunteers are first laid off. If the Union is correct, and if the Employer were unable to effect the Union offer without a layoff, the result in this department would be that the Employer would be unable to provide fire services. In my view, if this were at all a reasonably possible result, the Employer's offer would have to be adopted. However, the Employer offered no evidence other than its naked assertion that such a layoff would be required. Next, taking into account the very small amount of money entailed in the difference between both offers, it is highly unlikely that any such layoff would be required. Accordingly, I conclude the Employer has an adequate ability to pay the Union's offer in this case.

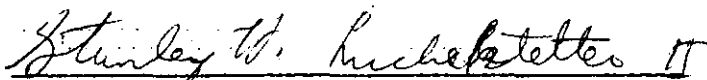
Conclusion

The offer of the Employer is clearly low. The year-end wage rate of the Union's offer is clearly high. However, the average annual increase appears to be appropriate. In balancing the two offers, I am satisfied that the offer of the Union is preferable because it preserves the relative position of the Franklin fire fighters to other fire fighters in the Milwaukee area rather than permitting further deterioration. The Employer has the ability to pay this offer.

AWARD

Based upon the foregoing, it is ordered that the parties' 1982 collective bargaining agreement include the final offer of the Union.

Dated at Milwaukee, Wisconsin, this 25th day of January, 1983.


Stanley H. Michelstetter II
Arbitrator